



TITLE 35 ARTICLE 13

ANHYDROUS AMMONIA

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ARTICLE 13
Anhydrous Ammonia

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35-13-101. Legislative declaration.

This is an article to prescribe uniform regulations in this state for safety in the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank or tank trailer, and utilizing anhydrous ammonia as an agricultural fertilizer; and to provide for the enjoining or abatement of violations of regulations issued under this article; and to prohibit the refilling or use of such containers without authorization by the owner thereof; and to prohibit the adoption by municipalities or other political subdivisions of ordinances or regulations in conflict with this article. THE GENERAL ASSEMBLY HEREBY DECLARES THAT ANY VIOLATION OF THIS ARTICLE OR RULES PROMULGATED THEREUNDER SHALL CONSTITUTE A SUBSTANTIAL DANGER TO PUBLIC HEALTH AND SAFETY.

35-13-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Anhydrous ammonia" means the compound formed by the combination of the two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume in compressed and liquefied form.

(2) "Commissioner" means the commissioner of agriculture.

35-13-103. Commissioner to promulgate rules.

The commissioner shall, in addition to other relevant criteria, use as a guide to make, promulgate, and enforce rules setting forth minimum general safety standards covering the design, construction, location, installation, and operation of equipment for storage, handling, transportation by tank truck or tank trailer, and utilization of anhydrous ammonia fertilizer such standards as provided in American national standards institute standard K61.1-1999, or subsequent revisions thereof. Said rules shall be as are reasonably necessary for the protection of the safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the commissioner only after a public hearing thereon.

35-13-104. Condition of equipment.

All equipment shall be installed and maintained in a safe operating condition and in conformity with the rules and regulations adopted under section 35-13-103.

35-13-105. Restriction of use of containers.

(1) No person, firm, or corporation, other than the owner and those authorized by the owner to do so, shall sell, fill, refill, deliver, or permit to be delivered, or use in any manner any anhydrous ammonia ~~container or receptacle~~ STORAGE TANKS, MOBILE TRANSPORTATION TANKS, OR TANK-MOUNTED APPLICATORS for any other purpose whatsoever.

(2) No person shall ~~sell, purchase, attempt to purchase~~, fill, refill, deliver, or permit to be delivered any anhydrous ammonia ~~container or receptacle~~ STORAGE TANKS, MOBILE TRANSPORTATION TANKS, OR TANK-MOUNTED APPLICATORS that has not been ~~inspected~~ REGISTERED in compliance with the provisions of this article ~~and that is less than five hundred gallons.~~

35-13-106. Effect of rules and regulations - prohibitions.

The rules and regulations promulgated pursuant to this article shall have uniform force and effect throughout the state, and no municipality or other political subdivision shall enact or enforce any ordinances, rules, or regulations which do not meet the rules and regulations promulgated pursuant to this article; except that home rule cities enforcing ordinances, rules, and regulations equal to or more stringent than those prescribed under this article may continue to perform such functions.

35-13-107. Enforcement.

(1) The department of agriculture is authorized to administer and supervise the enforcement of this article and of rules adopted under this article or under section 35-1-107 (5). ~~To this end, the department of agriculture and the commissioner shall:~~

~~—— (a) Provide for and have full and complete power and authority to make such periodic investigations and inspections as may be deemed necessary to disclose violations;~~

~~—— (b) Give written notice to violators of this article that a deficiency exists and that a reasonable period of time shall be given to correct the noted deficiencies, after which period another inspection shall be made;~~

~~—— (c) Receive and provide for investigation of complaints of violations of this article;~~

~~—— (d) Determine whether a deficiency exists and, if all administrative remedies have been exhausted, to correct such deficiencies, and, if the commissioner considers that immediate and irreparable injury, loss, or damage will result if such violation is not immediately restrained or enjoined, the district attorney of the judicial district in which a cause of action may arise under this article, upon being requested by the commissioner, shall bring an action to obtain an order to restraint or enjoin any such violation.~~

(2) THE COMMISSIONER, UPON HIS OWN MOTION OR UPON THE COMPLAINT OF ANY PERSON, MAY MAKE ANY AND ALL INVESTIGATIONS NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE.

(3)(A) AT ANY REASONABLE TIME DURING REGULAR BUSINESS HOURS, THE COMMISSIONER SHALL HAVE FREE AND UNIMPEDED ACCESS UPON CONSENT OR UPON OBTAINING AN ADMINISTRATIVE SEARCH WARRANT:

(I) TO ALL BUILDINGS, YARDS, WAREHOUSES, STORAGE FACILITIES, TANKS. TANK TRAILERS, VEHICLES AND ANY OTHER PUBLIC OR PRIVATE PROPERTY, PREMISES OR CARRIERS IN WHICH ANY ANHYDROUS AMMONIA IS KEPT, STORED, HANDLED, DISTRIBUTED OR TRANSPORTED FOR THE PURPOSE OF CARRYING OUT ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE PURSUANT TO THIS ARTICLE;

(II) TO ALL BUSINESS RECORDS RELATED TO THE STORAGE, USE, TRANSPORTATION OR DISTRIBUTION OF ANHYDROUS AMMONIA FOR THE PURPOSE OF ENFORCING ANY PROVISION OF THIS ARTICLE OR RULE MADE PURSUANT TO THIS ARTICLE.

(B) THE COMMISSIONER SHALL HAVE FULL AUTHORITY TO ADMINISTER OATHS AND TAKE STATEMENTS, TO ISSUE ADMINISTRATIVE SUBPOENAS

REQUIRING THE ATTENDANCE OF WITNESSES BEFORE HIM AND THE PRODUCTION OF ALL BOOKS, MEMORANDA, PAPERS, AND OTHER DOCUMENTS, ARTICLES, OR INSTRUMENTS, AND TO COMPEL THE DISCLOSURE BY SUCH WITNESSES OF ALL FACTS KNOWN TO THEM RELATIVE TO THE MATTERS UNDER INVESTIGATION. UPON THE FAILURE OR REFUSAL OF ANY WITNESS TO OBEY ANY SUBPOENA, THE COMMISSIONER MAY PETITION THE DISTRICT COURT, AND, UPON A PROPER SHOWING, THE COURT MAY ENTER AN ORDER COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. FAILURE TO OBEY SUCH AN ORDER OF THE COURT SHALL BE PUNISHABLE AS A CONTEMPT OF COURT.

(4) WHENEVER THE COMMISSIONER POSSESSES EVIDENCE SATISFACTORY TO HIM THAT ANY PERSON HAS ENGAGED IN OR IS ABOUT TO ENGAGE IN ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED UNDER THIS ARTICLE, HE MAY APPLY TO ANY COURT OF COMPETENT JURISDICTION TO TEMPORARILY OR PERMANENTLY RESTRAIN OR ENJOIN THE ACT OR PRACTICE IN QUESTION AND TO ENFORCE COMPLIANCE WITH THIS ARTICLE OR ANY RULE ADOPTED UNDER THIS ARTICLE. IN ANY SUCH ACTION, THE COMMISSIONER SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES SHALL THE COURT REQUIRE THE COMMISSIONER TO POST A BOND.

35-13-108. Civil penalties.

(1) (a) The commissioner may impose a civil penalty on any person who violates, any provision of this article or any rule adopted under this article or under section 35-1-107 (5). Such penalty shall not exceed seven hundred fifty dollars per day per violation.

(b) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the violator to stay in business.

(2) The commissioner shall not impose a civil penalty unless the person charged is given notice and an opportunity for a hearing pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect, or if any person fails to pay, all or any portion of a civil penalty imposed pursuant to this section, the commissioner may recover the amount of the penalty plus costs and attorney fees, by action in a court of competent jurisdiction.

(4) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund, created in section 35-1-106.5.

35-13-109. Registration - application - fees.

(1) On or before ~~July 1~~ THE DATE SPECIFIED BY COMMISSIONER BY RULE of each year, every person who owns one or more anhydrous ammonia storage tanks, mobile transportation tanks, or tank-mounted applicators within this state shall register each of such tanks or applicators with the department and shall pay a registration fee as established by the agricultural

commission. A registration is not transferable. No reduction of a registration fee shall be made for a fractional part of a year.

(2) An application for registration shall state:

- (a) The name of the applicant;
- (b) If the applicant is a firm, the names of its members;
- (c) If the applicant is a corporation, the names of its officers;
- (d) The applicant's business address;
- (e) The applicant's telephone number;
- (f) The name and location of each fixed bulk facility; and
- (g) The serial number or other identifying number of each mobile transportation tank or tank-mounted applicator.

(3) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, the agricultural commission shall establish a fee schedule to cover all of the direct and indirect costs of administering and enforcing the provisions of this article.

(4) (a) All fees, fines, and penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(b) Fees established pursuant to this section shall be reported; on or before December 1 of each year, to the agriculture, natural resources, and energy committee of the senate and the agriculture, livestock, and natural resources committee of the house of representatives.